

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BENJAMIN BRAXTON, *a/k/a*
Obed/Edom Braxton,

9:17-cv-1346 (BKS/ML)

Plaintiff,

v.

KEVIN BRUEN, *Deputy Commissioner of Counsel, et al.,*

Defendants.

Appearances:

Plaintiff pro se:

Benjamin Braxton
16-A-2314
Clinton Correctional Facility
P.O. Box 2000
Dannemora, NY 12929

For Defendants:

Hon. Letitia James
Joshua E. McMahon, Esq.
New York State Attorney General
The Capitol
Albany, NY 12224

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Benjamin Braxton, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 based on his alleged exposure to unreasonable levels of secondhand smoke during his incarceration at Clinton Correctional Facility. (Dkt. No. 42). On February 21, 2020, Defendants filed a motion for summary judgment. (Dkt. No. 80). Plaintiff has responded in opposition to the motion. (Dkt. Nos. 86, 87). This matter was referred to United

States Magistrate Judge Miroslav Lovric who, on August 24, 2020, issued a Report-Recommendation recommending that Defendants' motion be denied. (Dkt. No. 88). Magistrate Judge Lovric advised the parties that, under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 88, at 31).

No objections have been filed. As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 229 (N.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b), Advisory Committee Notes to 1983 Amendment). Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 88) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment (Dkt. No. 80) is **DENIED**; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: September 25, 2020
Syracuse, New York


Brenda K. Sannes
U.S. District Judge